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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	FCC 92-541
)	
Implementation of Section 8 of)	
the Cable Television Consumer)	
Protection and Competition Act)	MM Docket No. 92-263
of 1992)	
)	
Consumer Protection and Customer)	
Service)	

To the Commission:

**C-TEC COMMUNITIES
REPLY COMMENTS ON
CONSUMER PROTECTION AND CUSTOMER SERVICE**

Pursuant to Sections 1.414 and 1.419 of the Commission's Rules and the Commission's December 10, 1992 Notice of Proposed Rule Making ("NPRM"), the City of Greenville, City of Cedar Springs, City of Coopersville, and City of Rockford, Michigan, all of whom receive cable service from C-TEC Corporation, ("C-TEC Communities") respectfully submit their comments to encourage this Commission to set high Federal standards for consumer protection and customer service and to allow for a meaningful local role as well. Such actions will further the objective of the Cable Television, Consumer Protection and Competition Act of 1992 ("the Act" or "1992 Act") of providing better customer service for cable subscribers than previously existed.

I. INTRODUCTION AND SUMMARY

C-TEC Communities have reviewed the initial filings in this docket by operators such as Continental Cablevision, Inc., Comcast Corporation (together with Cox Communications and Jones Intercable)

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and Tele-Communications, Inc. and respectfully suggest that the position taken by such cable operators on the matters of Federal standards and the emasculated role for local governments is incorrect. Their comments effectively read Section 8 of the Act out of existence other than allowing this Commission to propose customer service guidelines (whose adoption at the local level the operators remain free to oppose). This is most apparent in the cable operators' position that any customer service standard can be adopted by a municipality only with the cable operator's consent! Thus, the cable operators contend they have a veto over any local or Federal customer service standards which they do not like.

Congress did not intend such a nullity in Section 8 of the Act. If customer service standards adopted by the cable operators had been sufficient, Congress would not have acted. Instead, Congress intended to set Federal minimums and confirm the right of municipalities to unilaterally adopt stricter customer service ordinances where necessary to protect their residents.

This Commission should be aware that the extreme position taken by the cable operators in their filings with this Commission is representative of the positions cable operators sometimes take in their dealings with municipalities. Note that several of the cable operators effectively refuse to concede the right of municipalities to even adopt the standards to be promulgated by

this Commission!¹ This extreme position by the cable operators shows that customer service is unlikely to improve without strong action and a strong statement of position by this Commission.

C-TEC Communities stress the need for strong Federal minimum customer service standards and express substantial concern that the vague and general language in the NCTA standards is inadequate in this regard. C-TEC Communities support the detailed comments made by NATOA and others in support of higher and more detailed standards.

C-TEC Communities respectfully suggest that given (1) -- the significant problems which Congress found in the customer service area (such as those described herein), coupled with (2) -- the intransigence shown by the cable operators in their filings in this docket, that (3) -- the prudent way for this Commission to proceed is by adopting high customer service standards, recognizing that in individual communities there may have to be some adjustment or relaxation of these to fit local conditions. It is far better for this Commission to adopt reasonably high standards and allow for some variance from them (locally or by obtaining waivers from this Commission) than to adopt standards which to be able to apply

¹ Continental Cablevision says that a municipality's only "arguably" can adopt the FCC standards. Comments of Continental Cablevision at 48. TCI and Comcast, et al state that they "will not object" or will "consent" to a municipality's adopting the FCC standards. Comments of TCI at 17. But TCI effectively says it will not consent to the FCC standards if they do not "track" the NCTA standards. Id. And TCI says there can be no enforcement without its consent. Id. 21.

everywhere (or almost everywhere) are so low as to not be very meaningful.

C-TEC Communities support the positions taken by NATOA, West Michigan Communities, and the City of Kalamazoo, Michigan in their initial comments in this proceeding.

II. C-TEC COMMUNITIES' INTEREST IN THIS MATTER

C-TEC Communities are four cities in Michigan ranging in size from 2,600 to 8,100 people who receive cable service from C-TEC Corporation. C-TEC is a multiple system operator which serves approximately 130,000 subscribers in Michigan on 70 different systems involving over 400 local units of government. C-TEC also serves an additional 120,000 in New York, Pennsylvania, and New Jersey.

The communities making this filing have had significant customer service problems in recent years. They are aware that other communities in Michigan served by C-TEC have had similar problems.

Specifically, these reply comments are filed to help guide this Commission in its rulemaking by placing before it some of the problems described at a meeting last December of many municipalities in Michigan served by C-TEC where the communities discussed their cable problems, concerns, and matters of common interest. C-TEC Communities believe that the nature and extent of these problems help show the need for significant Federal action.

The following are some of the problems municipal officials described at the meeting. Some of these go beyond customer service

matters but are relevant for this Commission to be aware of and have some appreciation for the scope and magnitude of the problems local communities have faced and the need for an effective means of dealing with them:

- Many communities reported significant difficulties in contacting C-TEC by telephone. It is very difficult to get through to them. Their lines are often busy.
- Many reported substantial complaints about being put on hold for 20 to 30 minutes and some complaints of being put on hold for 60 minutes or more. This is just to get repair service or report an outage.
- The calls to C-TEC are all routed to its home office in Pennsylvania. C-TEC should be able to adequately staff its telephone center so that the preceding problems do not occur.
- One community was constructing a bike path. It gave all utilities several months notice to move their lines out of the area of construction. C-TEC did not move its lines and when called shortly before construction was to start, told the community that if it hit something, to call and it would come out and perform repairs. The community observed that although the repair crews did respond promptly once the line was hit during construction, service was unnecessarily interrupted to some customers and "This is no way to run a railroad."
- There are frequent service interruptions and there are problems with picture quality. People repeated the problems noted above of not being able to get through to C-TEC to report such problems or being placed on hold for 20 to 60 minutes when trying to make such a call.

C-TEC Communities would note in fairness that they have since met with the State Vice President of C-TEC who has shown concern about the problems and has described how they are being addressed. C-TEC Communities sincerely hope that he is rapidly able to solve them in the manner he described. But the experience of C-TEC Communities and other communities shows the need for meaningful

Federal minimum standards plus clear local authority to deal with any problems that may occur.

C-TEC Communities note that their experience relates to a cable operator with small systems typically serving more rural areas: According to C-TEC, in Michigan it has roughly 130,000 subscribers and approximately 70 cable systems. The average size of each system is thus around 2,000 subscribers. These figures in fact overstate the typical system size because once C-TEC's two largest systems in Michigan are eliminated (Grand Haven and Traverse City serving 10,000 and 15,500 subscribers, respectively) the size of the typical system drops.

This filing thus provides an opportunity for this Commission to be aware of the customer service problems experienced by smaller communities. Smaller communities are entitled to high quality customer service and the Commission should move towards that end by taking the actions described herein.

III. C-TEC COMMUNITIES' COMMENTS

FCC Standards Generally:

The standards adopted by this Commission should be both reasonably high and self-executing. From the perspective of small communities, this is for several reasons.

First, C-TEC Communities stress that smaller communities have limited resources even though they must deal with a full range of governmental problems. And the communities making this filing (whose populations range from 2,600 to 8,100) are large compared to many of the small cities, villages, and townships served by C-

TEC (or receiving cable service from other operators). The limitations of such communities include funds, personnel, time, and access to expertise on cable, which is a very specialized matter.

These points show how many small communities as a practical matter will have to rely on the standards promulgated by the FCC as the ones applicable in their area for customer service.

This Commission should thus prepare its standards with these facts in mind and ensure that the standards are reasonably high and self-executing. Only such actions will assure an adequate floor for customer service in cable systems in C-TEC's service area and nationwide.

Second, C-TEC Communities urge this Commission to adopt reasonably high standards: If for some reason they are inappropriate to a particular community, then this Commission should allow the cable operator with the participation of the local municipality to seek a waiver from this Commission (or, if appropriate, to seek a change directly at the local level). Given the limited resources available to small cities, villages, and townships only this approach will set an effective floor on customer service standards.

By contrast, if this Commission adopts lesser standards, it is unrealistic for this Commission to expect small units of government to have the resources or expertise to be able (in advance of problems occurring) to develop stricter standards, even where these may be appropriate based upon local conditions and needs.

Telephone Response Times:

The Commission's telephone response standards have to take into account the types of problems C-TEC Communities have experienced. Specifically, the "telephone answer time" has to expressly include the time people are put on hold. As noted above, the communities received many complaints of people being put on hold for 20 minutes or more (in some cases 60 minutes).

No Small System Exemption:

The same standards should apply for all systems--the exemptions in the NCTA standards for systems with fewer than 10,000 subscribers should be eliminated. The ability to petition this Commission or local governments (as appropriate) for waivers from or changes in this Commission's standards is adequate to cover situations where some lessening of the standards is truly needed.

C-TEC Communities note that currently all their service calls are being routed to the C-TEC home office customer service center, which serves around 250,000 subscribers. System size thus does not correlate with ability to provide adequate telephone service.

And even small stand-alone systems should meet standards adopted by this Commission: People are entitled to good service, and if necessary small operators will take actions to comply with the standards. C-TEC communities suggest that small operators have a number of options to economically meet such standards, such as:

- Forming a customer service center cooperative with other small operators.
- Contracting with a separate organization specializing in customer service calls to receive and forward such calls.

To put it briefly, the Commission should recognize that the business structure of cable operations changes and evolves. And just as many cable operators now contract out customer billing to third parties, so telephone response matters might be as well.

If this Commission does adopt an exception for small systems on telephone matters, it should specifically not apply to multiple system operators such as C-TEC who have (or could have) a centralized telephone customer service center.

Abnormal Conditions:

C-TEC Communities have been told that there is an upsurge in customer calls after bills go out each month (questions about the bill and the like). Such an upsurge is thus known, predictable and within the control of the cable operator--for example not all customer bills need be sent out at the same time, but instead can be staggered, 25% the first week of the month, 25% the second week and so on. In fact, C-TEC has told the communities it serves that it is now using just such staggered billing in order to even out the flow of calls to its customer service center.

For these reasons, this Commission should make clear that any periodic upsurge in customer calls due to billing practices is not an "abnormal condition" which excuses the operator from meeting applicable telephone response times.

Municipalities' Authority:

C-TEC Communities adopt and support the positions taken by NATOA, West Michigan Communities, and the City of Kalamazoo in their initial filings in this docket that under the 1984 Cable Act,

municipalities have the authority to unilaterally adopt customer service ordinances and that the 1992 Act clarifies and confirms this authority.

C-TEC Communities reject the comments of cable operators such as TCI, Comcast, Cox Communication, Jones Intercable, Continental Cablevision, and others who take the position that new customer service standards can be imposed only with the cable operator's consent and only at franchise renewal time (earlier only if the cable operator consents to it).

C-TEC Communities notes that the cable operators' position extends so far as indicating that the operator's question (or reserve the right to challenge) unilateral local implementation of the standards to be adopted by this Commission.² Note in this regard how Cablevision Industries refuses to concede that communities can unilaterally adopt the FCC's standards and instead only says that they "arguably" can do so. TCI tries to duck the issue by saying it will agree to and will not contest communities adopting this Commission's standards, but only if they "track" the NCTA standards.³ TCI could change its position in a minute on this once this Commission's standards are adopted. TCI goes on to state that the Federal standards can never be enforced against it unless it has agreed in advance to the enforcement mechanism. In sum, so much for this Commission's standards.

² See Footnote 1, above for sources for the following points.

³ It is unusual for people to be able to select which aspects of Federal law they will comply with.

The simple fact is that the cable operators' position is contrary to common sense: Congress clearly identified cable operators' poor performance on customer service as a major problem warranting action. The cable operators' position that Congress therefore said "Cable operators, no customer service standards can be imposed which you object to" -- in other words a cable operator veto -- is nonsensical: If cable operators had done a good job with their standards, there would be no need for this portion of the Act.

The cable operators' position is also contrary to how local governments work: Adopting ordinances as appropriate where problems come up, setting forth conduct that is either permitted or prohibited, and providing for appropriate enforcement. This is the way local governments nationwide work in a wide variety of areas by adopting ordinances which range from regulating local businesses; to land use and zoning; to building codes, traffic codes; and the like. Such ordinances are only adopted where there is a problem after notice and hearing.

This process has worked well in this country for over two centuries. It applies here, too: Local governments are the representatives of the people who are the ultimate decisionmakers in this area (as in many others) on striking the appropriate balance desired in the community between the level of customer service that is provided, its cost, administrative ease, and the like. This is the role of local government. Cable operators

should recognize that they are subject to this process just like other people and businesses.

Finally, the NPRM is correct in ¶ 7 in noting that Congress did not intend to let customer service matters go uncorrected until the expiration of the current franchise, which could be as long as 15 years from now. As noted above, C-TEC Communities have experienced significant problems in their citizens simply being able to telephone the cable company about an outage, a service problem or the like--not being able to get through, being put on hold for 20 minutes or more.

C-TEC has said it is addressing these problems, but if its efforts fail or if for any reason the problems recur, C-TEC Communities have to have the ability to unilaterally step in and impose local customer service standards that address the problems without the operator's consent and without waiting years to do this until franchise renewal time.

Interpretation of the Act:

The language of the Act and its legislative history leads to the conclusion that municipalities may adopt customer service ordinances and enforce them at any time (not just at the time of franchise renewal or modification), even over a cable company's objection. Although the NPRM derives this authority from § 632(a) of the Act (which is certainly a legitimate reading of it), C-TEC Communities respectfully suggest the following reading and analysis of § 632 and its legislative history as an alternative that leads to the same conclusion.

Specifically, C-TEC Communities suggest that in the various subsections of § 632 Congress addressed cable franchising, Federal standards and rejected Federal preemption arguments as follows:

Section 632(a) of the Act and the Conference Committee Report can be harmonized as relating principally to the establishment and enforcement of customer service requirements during the franchising process (or subsequent renewals or transfers). The changes made by the Act make clear that in the franchising or refranchising process, a community may "establish" customer service standards that it desires. The Act's addition of the word "establish" rejects an argument that could have been made under the 1984 Act that communities could only enforce standards previously adopted by a cable operator but that communities could not establish requirements of their own.

Section 632(b) requires the FCC to set minimum Federal customer service standards.

Section 632(c) by contrast is a series of "anti-Federal preemption" provisions indicating that the 1992 Act and this Commission's standards do not preempt state or local authority in the following areas: First, state and local consumer protection laws are unaffected. Second, a community and a cable operator can agree voluntarily to customer service standards higher than those set by this Commission. Third, a municipality can unilaterally impose customer service standards that are higher than those set by this Commission.

On the latter two items, Congress is simply being careful to make clear that the Federal standards are minimums, not maximums. In the first sentence of Section (c)(2), Congress is preventing cable operators from taking the position that they could not voluntarily agree to higher customer service standards with a municipality even if they wanted to, because the Federal standards preempt the field. This is an important point for Congress to make because some Federal laws are deemed not waivable such that a party could not agree to a different standard even if they wished to. A common example is the Federal minimum wage law -- an employee is prohibited from agreeing to work at less than minimum wage. Thus Congress' making this point is important and reflects careful draftsmanship.

The second sentence of (c)(2) (Congress' statement that local governments can unilaterally adopt customer service standards higher than those set by this Commission even if the cable operator does not agree to them) is different but equally important: Congress is saying that not only is there no Federal preemption of a voluntarily waiver of the FCC standards but that in addition there is no preemption of a local community unilaterally adopting higher or different standards. Congress thus recognized that the two ways to impose higher customer service standards in the cable area are by agreement and by ordinance. Given the importance of customer service, Congress was thus being careful in (c)(2) to rebut in advance the different Federal preemption arguments that

could be used for each way to adopt local customer service standards higher than the Federal standards.⁴

In this regard, C-TEC Communities note that the legislative history specifically rejects the "general applicability" reading given §632(c) by ¶ 5 of the NPRM and by the cable operators. Specifically, the operators argue that any customer service ordinances adopted by a municipality under §632(c)(2) have to be of general applicability -- such as applying to all utilities or service businesses. See, e.g., Comments of Continental Cablevision, page 50.

The short response is that the words "generally applicable" nowhere appear in the Act! And any gloss attempting to read them into the Act runs afoul of the Conference Committee Report which states that § 632(c) "preserves local authority to establish or enforce any municipal law or regulation" concerning customer service that is stricter or different than those of the FCC. Conference Report on S.12, 138 Congressional Record (daily edition) No. 124 at H8328 (September 14, 1992) (emphasis supplied). Congress has thus rejected the "general applicability" argument.

⁴ There is no inconsistency in stating that neither voluntary agreements nor local ordinances that exceed the Federal standards are preempted. As a practical matter, the realistic threat of unilateral local action to set customer service standards provides the incentive for cable operators to come to the table and work out a negotiated customer service agreement. Congress' clear statement that unilateral local action is allowed thus aids the prior statement in (c)(2) that voluntary agreements exceeding the Federal standards are allowed.

C-TEC Communities respectfully suggest that the reading of the Act and its legislative history set forth above is highly persuasive.

- It gives meaning to all sections of the Act and of the Conference Committee report in a reasonable fashion without conflicts, surplusage, or the like.
- It does not read into the Act additional words such as "general applicability" which do not appear either in the Act itself or in its legislative history.
- It uniformly construes the phrase "customer service" at the several locations where it appears in § 632(a), § 632(b), and § 632(c).
- It gives a reasonable reading to the separate sections of the Act with § 632(a) dealing principally with franchise grants, renewals, and modifications while § 632(c)(2) deals with Federal preemption and confirms the ability for a community to have higher standards either by unilateral municipal action or by consent of the cable operator.
- It comports with the general intent of Congress to have this Commission adopt Federal minimum standards but to allow local municipalities to adopt higher or different standards where appropriate.⁵
- It is logical because it confirms the position of municipalities (which some have litigated and won)⁶ that under the 1984 Act they could unilaterally adopt cable customer service standards. Given the thrust of the Act to strengthen municipalities' hand on customer service, it is unlikely that Congress would have cut back on such rights.

IV. CONCLUSION

For the reasons stated above, C-TEC Communities urge this Commission to adopt high Federal minimum standards for customer

⁵ It also rejects TCI's arguments that the Federal standards are a ceiling, not a floor. See comments of Tele-Communications Inc., note 17 at page 17.

⁶ See comments of the City of Kalamazoo, Michigan and of West Michigan Communities.

service which are self-executing; to put the burden on a cable operator to come to the local municipality or this Commission (with notice to the municipality) for any relaxation of the Federal minimum standards; and to confirm the right of municipalities at any time to unilaterally adopt customer service standards stricter than or different than the Federal standards together with appropriate enforcement mechanisms for them.

Respectfully submitted this 20th day of January, 1993.



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